86-19

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

WILLIAM M. BIERMANN, PETITIONER,

V.

UNITED STATES OF AMERICA, RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

WILLIAM M. BIERMANN, PETITIONER PRO SE
192 PARK LAND DRIVE
LAKE PLACID, FLORIDA 33852

TELEPHONE: (813) 465-5090

15 pp

QUESTIONS PRESENTED

(1) Is Respondent in possession of the necessary FACTS in the Administrative Record to substantiate that Petitioner had submitted a FALSE Treasury Form W-4?

(2) Did Petitioner fail to state a claim for which relief may be granted and is subject matter jurisdiction of the Court lacking to grant all relief sought by Petitioner's Complaint?

(3) Was Petitioner denied "due process of law" when the Court issued the ORDER OF DISMISSAL (marked FINAL ORDER) based upon Respondent's Motion to Dismiss, thereby denying Petitioner the opportunity of a trial by jury?

(4) Is the Petitioner an "employee" as defined in Section 3401(c) of the Internal Revenue Code?

(5) Did the Naval Reserve Personnel Center of New Orleans, Louisiana violate Section 3402 of the Internal Revenue Code

in requiring Petitioner, as a natural private individual, to submit a Treasury Form W-4 to his "Contracting Party" the Navy Finance Center in Cleveland, Ohio?

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(A) BIERMANN CONTENDS THAT HIS FORM W-4 WITHHOLDING STATEMENT WAS NOT FALSE OR MISLEADING BECAUSE "HE IS NOT A PERSON LIABLE FOR TAXES, IS NOT AN EMPLOYEE AND THEREFORE NOT SUBJECT TO WITHHOLDING WITHIN THE MEANING OF THE CODE, IS NOT PAID WAGES, BUT INSTEAD IS A FREEMAN AND AN UNENFRANCHISED INDIVIDUAL NOT

SUBJECT TO TAXATION." (emphasis added by Petitioner);

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OPINIONS BELOW

The purported opinions of the District Court for the Southern District of Florida dated the 23rd day of September 1985 headed ORDER OF DISMISSAL (marked FINAL ORDER) (pages 1A-3A), and the Eleventh Circuit Court of Appeals dated April 11, 1986, and marked "DO NOT PUBLISH" (pages 17A-20A), are attached hereto in the Appendix of this Petition for Certiorari. Both of these documents make inappropriate and unsubstantiated reference to Biermann v. Commissioner of Internal Revenue, No. 84-5996 (11th Cir.August 26, 1985) or 769 F.2d 707, 708 (11th. Cir. 1985), inasmuch as the issues in that cited case and the issues presented in this instant case, as well as the circumstances, are entirely different as explained under item (9) of Argument, pages 31-33, of this Petition for Certiorari. See pages 12A-16A of Appendix for a copy of Biermann v. Commissioner, Supra.

JURISDICTION

The purported judgment of the Eleventh Circuit Court of Appeals was alleged entered, but clearly marked in bold letters "DO NOT PUBLISH", on April 11, 1986.

A copy of the JUDGMENT, issued as MANDATE June 6, 1986, and entered by the Eleventh Circuit on the 11th of April 1986 citing Rule 23 of the Eleventh Circuit permitting that Court to place a case on the non-argument calendar for submission and decision without oral argument, is included on pages 21A and 22A of the Appendix of this Petition for Certiorari. Inasmuch as the Petitioner had requested an opportunity for oral argument in the event Respondent did not reply to the five (5) STATEMENT OF THE ISSUES in his Brief, which they did not, and inasmuch as the Eleventh Circuit supported the decision of the District Court for the Southern District of Florida based on FALSE charges made by Respondent in his

MOTION TO DISMISS, the judgment of the District Court was AFFIRMED and REMANDED to that Court for a determination of reasonable attorney's fees.

Petitioner's MOTION FOR RECONSIDERATION, in response to a denial of his MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR REHEARING due to the death of his wife, was also denied by the Eleventh Circuit on the 28th of May 1986. A copy of that MOTION FOR RECONSIDERATION is included for clarity in the Appendix on pages 9A and 10A of this Petition for Certiorari.

The ORDER dated the 17th day of Oct. 1985 (page 4A of Appendix); the ORDER of the 3rd day of Feb. 1986 (page 5A of Appendix); the ORDER of the 11th day of February 1986 (pages 6A and 7A of Appendix); all issued by the District Court for the Southern District of Florida, and all of which pertain to a Motion to Set Amount of Attorney's Fees; in addition to being in dispute, are also in-

cluded herein for clarity.

Although the ORDER of April 28, 1986 issued by the Eleventh Circuit Court of Appeals (page 8A of Appendix); the Petitioner's MOTION FOR RECONSIDERATION (pages 9A and 10A of Appendix); and the BY THE COURT document filed on May 28, 1986 by the Eleventh Circuit (page 11A of Appendix) denying that motion, do not in any way effect this Petition for Certiorari, they are merely included to demonstrate to this Court that the Eleventh Circuit denied Petitioner's motion on the FALSE charge that his case is "legally frivolous"; to which Petitioner responded (page 10A of Appendix): "In all due respect,.....,, Appellant's position is not frivolous."

The statutory provision believed to confer on this Court jurisdiction to review judgment by writ of certiorari is Section 1254 of Title 28 of the United States Code, as provided by Section 7482(a) of the Internal Revenue Code (USC 26).

FACTUAL STATEMENT OF THE CASE

WILLIAM M. BIERMANN, Petitioner herein, is a natural private individual, and an unenfranchised sovereign who resides in the county of Highlands, state of Florida, and who maintains a mailing address of 192 Park Land Drive, Lake Placid, Florida 33852. He is a sovereign freeman who lives, resides, and works as a matter of natural right, and not as an exercise of any privilege or monopoly, as further set forth in the FACTUAL allegations of his Verified Complaint filed with the District Court.

On or about 3 March 1982, Petitioner, as required by Naval Reserve Personnel Center of New Orleans, Louisiana form NRPC 182Ø/75 (REV. 3-81), submitted "Form W-4 Employee's Withholding Allowance Certificate" in which he claimed exemption from withholding of federal income taxes. Form NRPC 182Ø/75 (REV. 3-81)stated, in part, the following:

> "The enclosed material is forwarded for your use in submitting an application for retired pay.....If this packet is used to submit your application please return the following completed forms, in duplicate: DD Form 108, NRPC Form 1800/10, IRS Form W-4" (emphasis added)

In a delayed response to the submission of that form, on or about March 9, 1983, Respondent issued an administrative order, injuction and assessment of a $500 penalty in which two hand-checked boxes contained contradictory statements about the information in possession of the Respondent. One box stated:

> "Based on THE INFORMATION AVAILABLE TO US, we: ... Are assessing the $500 penalty." The other box checked stated: "Your Form W-4 is not acceptable because ... THE INFORMATION YOU SUBMITTED IS NOT SUFFICIENT for us to make a determination that your Form W-4 is correct." (emphasis added)

On the 14th of March 1983 Petitioner raised a timely 5 page administrative appeal in which he outlined all of the numerous errors committed by the District Director supported by the FACTS upon which Petition-

er relied in support of his appeal. Respondent responded to that appeal on the 2nd of May 1983, wherein a denial of penalty abatement was made, and further informing Petitioner that further appeal procedures within the Internal Revenue Service are not available in the case of failure or refusal to comply with tax laws because of moral, religious, political, constitutional, conscientious or similar grounds. No findings of FACT or conclusions of law were stated as a basis for denial of the penalty abatement, and no statements of any sort were made with respect to the FACTS Petitioner presented; therefore, Petitioner responded on the 2nd of May 1983 wherein he informed Respondent that nowhere in his administrative appeal did he indicate that he refused to comply with tax laws because of moral, religious, political, constitutional, conscientious, or similar grounds, and further requested that

Respondent REOPEN the case because of this FALSE charge. However, Respondent never responded to that request.

On the 28th of June 1983 Petitioner received a letter from the Respondent dated June 27, 1983 entitled FINAL NOTICE asserting a demand for payment of $500 plus interest in the amount of $14.65. In this letter the demand for payment of $500 was incorrectly referred to as a "Tax Balance", and not as a penalty for false information with regard to withholding. Petitioner proceeded for the purpose of exhausting his administrative remedies by tendering $514.65 in full, under protest, accompanied by a letter dated 28 June 1983 in which he explained why he had not previously made payment of the penalty. However, Respondent never responded to that letter.

On the 1st of August 1983 Petitioner made a 6 page request for refund of the penalty plus interest. In that request for re-

fund Petitioner again reiterated all of the wrongdoings of the Respondent and his agents. In response to this request for refund Respondent on August 30, 1983 made a final administrative determination and denial, thus exhausting all of the Petitioner's administrative remedies. In this letter Respondent stated that Petitioner's claim for refund was based on his view that certain tax laws are unconstitutional; whereupon Petitioner responded on the 14th of September 1983 that nowhere in his request for refund, or at any other time to the Internal Revenue Service or anyone else, did he ever make that statement. However, ~~Responded~~ Respondent never responded to that letter either.(EXHIBIT A See of this Appendix)

On the 15th of November 1983 Petitioner addressed a letter to William M. Hungeling of the Internal Revenue Service in Doraville, Georgia DEMANDING a full disclosure of the FACTS upon which he relied in making a determination of a penalty and his action of

overriding Petitioner's lawfully submitted EXEMPT W-4 Form on file with the NAVY FINANCE CENTER in Cleveland, Ohio. However, he never responded to that letter either. A letter, however, dated December 12, 1983 was received from Disclosure Officer Betty A. Edwards, which appears to be a reply. It is necessary to say that it appears to be a reply, inasmuch as another identical letter from Petitioner had also been addressed to William M. Hungeling on the 25 th of October 1983 in which he also had DEMANDED a full disclosure of the FACTS upon which Hungeling relied in making his determination of another $500 penalty and his action of also overriding Petitioner's lawfully submitted EXEMPT W-4 on file with PUROLATOR COURIER CORPORATION . Since Petitioner had addressed two letters of identical nature to William M. Hungeling within a time span of only three weeks, and because Respondent invariably fails to refer-

ence any originating correspondence when replying to letters addressed to their office, it can only be assumed that the letter from Betty A. Edwards was in response to both of Petitioner's letters to William M. Hungeling. Included in Edwards' letter of the 12th of December 1983 were ten documents from Petitioner's case file which were apparently released to him in response to both of the letters addressed to William M. Hungeling. However, none of those ten documents contained any information that could even remotely be classified as false information in regard to withholding. Also, Edwards admits in paragraph two of her letter that the ten documents forwarded to Petitioner appear to be <u>all</u> that presently remain in the Service Center case file which have a bearing on the determinations regarding assessment of W-4 penalties. Therefore, Petitioner responded on the 27th of December 1983 by submitting a NOTICE OF FORMAL APPEAL

AND DEMAND FOR DOCUMENTS WITHHELD in which he requested that any other documents that may have been withheld be provided to him under the Freedom of Information and/or Privacy Act; whereupon Respondent responded on January 16, 1984 and admitted there were no documents withheld which would constitute an appeal action, and that the remainder of the information that Petitioner did not receive consisted mostly of correspondence addressed to the Petitioner and received from the Petitioner. Consequently, Petitioner responded to that letter of January 16, 1984 by endorsing thereon his DEMAND to William M. Hungeling that the penalty therefore be abated. However, he never responded to that DEMAND.

On the 22nd day of August 1985, in response to Petitioner's VERIFIED COMPLAINT served upon the District Court and the Respondent on the 27th of June 1985, Respondent served upon the Petitioner a copy of

his motion to the Court titled MOTION TO DISMISS, allegedly supported by a MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS, in which was claimed that Petitioner failed to indicate a claim for which relief /may be granted, and that the Court lacked subject matter jurisdiction to grant all of the relief sought by Petitioner's complaint; whereupon Petitioner timely filed on the 3rd of September 1985 a NOTICE OF OBJECTION TO DEFENDANT'S MOTION TO DISMISS wherein he clearly outlined all of the defects in Respondent's motion, and which Petitioner supported by his document MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS, attached thereto.

In response to Respondent's motion to dismiss and Petitioner's objection to that motion, the Court filed an ORDER OF DISMISSAL (marked FINAL ORDER) on the 24th of September 1985. In that ORDER OF DISMISSAL the Court only states "The Defendant moves

to dismiss this case as the plaintiff fails to state a claim for which relief may be granted.", but fails to make any mention of lack of jurisdiction by the Court.

On the 17th of October 1985, in response to Respondent's MOTION TO SET AMOUNT OF ATTORNEY'S FEES in the amount of $268.31 filed October 15, 1985, the District Court responded by filing its ORDER granting that motion; whereupon Petitioner in response to a letter from Respondent dated November 12, 1985 demanding prompt payment of the judgment, respectfully advised the District Court on the 25th of November that in demand for payment of $268.31 by Respondent, he therewith gave to the Court his "Supersedeas Bond" in that amount, and respectfully requested that collection of the judgment be stayed pending the outcome of the appeal. However, due to a misunderstanding on the part of the Petitioner as to what constitutes a "Supersedeas Bond", it became nec-

essary for the Court to VACATE its ORDER of February 3, 1986 and file a new ORDER in which the Petitioner was ordered to either post a supersedeas bond or cash in the amount of $300.00; whereupon Petitioner made payment to the Court on the 14th of February 1986 in the amount of $300.00 by American Express Money Order. Included in the appendix attached to this petition is a copy of that ORDER filed by the Court on the 11th of February 1986.

On October 23, 1985 the District Court filed Petitioner's Notice of Appeal dated the 17th of October 1985 with the Eleventh Circuit Court of Appeals.

REVIEW OF JUDGMENT OF FEDERAL COURT

Inasmuch as a review of judgment of the United States District Court for the South-
District of Florida
ern/is sought, the basis for federal jurisin the court of first instance is Section 1340 of Title 28 of the United States Code as so provided by Section 7402 of 26 USC.

ARGUMENT AMPLIFYING THE REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

(1) THE DISTRICT COURT ABUSED ITS DISCRETION:

The District Court acted contrary to the evidence on file in that Court as so charged by Petitioner in his APPEAL INFORMATION SHEET attached as EXHIBIT B to his appeal with the Eleventh Circuit Court of Appeals in which it was clearly shown that the Court lacked sufficient evidence to support its ORDER OF DISMISSAL. The Court further erred in its failure to cite the conclusion of law and to state those FACTS specially in support of that ORDER OF DISMISSAL as required by Rule 52(a) of Federal Rules of Civil Procedure, which was also brought forward in Petitioner's Appeal. Also, the case law cited by the Court in its ORDER OF DISMISSAL, Biermann v. Commissioner of Internal Revenue, No. 84-5996 (11th Cir. August 26, 1985), is inappropriate in this instance inasmuch as that decision was based

upon Biermann, who is the Petitioner in this petition, filing a Federal Income Tax Return, and not on whether or not he filed a FALSE Treasury Form W-4. The cases are completely and totally unrelated inasmuch as the STATEMENT OF THE ISSUES presented to the Court by Petitioner in his appeal and those presented by both the Respondent and the Petitioner under the aforementioned case law cited by the District Court are also completely unrelated. In addition to that, the decision handed down by the Eleventh Circuit in the Biermann v. Commissioner case was that the Court only held that monies received by Petitioner constituted taxable income, notwithstanding his contentions, and never ruled upon or held by that Court, that he is not a person liable for taxes, is not an employee and therefore not subject to withholding within the meaning of the Code, is not paid wages, but instead is a freeman and an unenfranchised individual

not subject to taxation. Also, the Court in its findings stated Petitioner was liable for tax deficiencies and additions to the tax for the years 1978 and 1979, but never stated that PETITIONER WAS LIABLE FOR THE TAX!!

(2) RESPONDENT FAILED TO BRING FORWARD ANY FACTUAL EVIDENCE IN THE ADMINISTRATIVE RECORD THAT PETITIONER FILED A FALSE TREASURY FORM W-4:

Notwithstanding seven attempts in writing by Petitioner, Respondent failed to ever bring forward any FACTS to substantiate the charge that Petitioner had filed a FALSE Treasury Form W-4. The Respondent never responded to any of the questions at any time in relation to any FACTS alleged to be on file in the administrative record.

(3) RESPONDENT'S CHARGE THAT PETITIONER FAILED TO STATE A CLAIM FOR WHICH RELIEF MAY BE GRANTED IS GROUNDLESS; AS IS THE CHARGE THAT THE DISTRICT COURT LACKS SUBJECT MATTER JURISDICTION TO GRANT ALL OF THE RELIEF SOUGHT BY PETITIONER'S COMPLAINT:

Notwithstanding that Petitioner clearly outlined 59 FACTUAL elements in his

VERIFIED COMPLAINT in rebuttal to this erroneous charge, the District Court nevertheless granted the ORDER OF DISMISSAL based on that charge. Inasmuch as the Court failed to indicate in its ORDER OF DISMISSAL any reference to a lack of subject matter jurisdiction, its failure to do so is an indication that such lack of subject matter jurisdiction did not exist, thereby clearly indicating that its ORDER OF DISMISSAL was entirely based on the Respondent's erroneous charge that Petitioner failed to state a claim for which relief may be granted.

(4) PETITIONER WAS DENIED "DUE PROCESS OF LAW":

Petitioner has denied "due process of law" when the Court issued the ORDER OF DISMISSAL (marked FINAL ORDER) which was erroneous based upon Respondent's/motion to dismiss, and thereby denying Petitioner an opportunity of a trial by jury.

Black's Law Dictionary, (Fifth Edition) under the cap-

tion "Due Process of Law" appearing on page 449 (beginning at the top of that page), states the following:

> "Due process of law implies the right of the person effected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty, or property, in its most comprehensive sense; to be heard, by testimony or otherwise, and to have the right of controverting, by proof, every material FACT which bears on the question of right in the matter involved. If any question of FACT or liability be conclusively presumed against him, this is not due process of law." (emphasis added).
>
> (Due process of law) Phrase means that no person shall be deprived of life, liberty, property or of any right granted him by statute, unless matter involved first shall have been adjudicated against him upon trial conducted according to established rules regulating judicial proceedings, and it forbids condemnation without a hearing. (Pettit v. Penn, La. App., 180 So.2d 66, 69. (emphasis added).
>
> The essential elements of due process of law are notice and opportunity to be heard and to defend in orderly proceeding adapted to nature of case, and the guarantee of due process requires that every man have protection of day in court and benefit of general law. Di Majo v. Reid, 132 N.J.L. 17, 37 A. 2d 829, 830. (emphasis added).

(5) PETITIONER IS NOT AN "EMPLOYEE" AS DEFINED IN SECTION 3401(c) OF THE INTERNAL REVENUE CODE:

Section 3401(c) of the Internal Revenue Code is quoted herewith:

> For purposes of this chapter, the term "employee" includes an officer, employee, or elected official of the United States, a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term "employee" also includes an officer of a corporation.

Since Petitioner does not work for the government, but only operates on the principle of a deferred pension relationship with his Contracting Party, the Navy Finance Center in Cleveland, Ohio; is not an officer of a corporation, including the Corporation known as the United States of America, Petitioner is not an "employee" as defined under Section 3401(c) of the Internal Revenue Code. Also, Petitioner is not an "employee" as defined in Title 5, Section 2105 covering Government Organization and Employees.

Respondent, unable to challenge Peti-

tioner's position that he is not an "employee" as defined in Section 3401(c) of the Code, then proceeds to make the following remark in his MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS:

> "By its plain language, Section 3401 (c) is not an exclusive list of person's (sic) which are deemed to be employees. Rather,that subsection merely clarifies that certain individuals which may not be traditionally viewed as employees are deemed to be such for purposes of withholding income taxes from wages." (sic and other emphasis added).

That aforementioned remark is completely FALSE and Respondent knows it to be. What Respondent is really saying is that since the law, as written, doesn't suit their purpose, they have determined that the law means something else than what it actually says. Respondent also refers to Treasury Regulation Section 31.3401(c)-(1)(a) and (b) in his MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS. However, those sections clearly state that a "legal" relationship between the "employer" and the

"employee" must exist. That "legal" relationship simply confirms Petitioner's position that since the relationship must be "legal", that only the exact definition of Section 3401(c), defining the word "employee", and Section 3401(d), defining the word "employer" applies, and not a determination made by the Respondent to suit their purpose. The following should be sufficient to alleviate any element of doubt as to whether or not a revenue law can be amended by a Treasury Regulation:

> The secretary of the treasury cannot by his regulation alter or amend a revenue law. Morrill v. Jones, 106 U.S. at 267.

Consequently, since the Petitioner does not meet the "legal" requirements of Section 3401(c) of the Internal Revenue Code, or of Treasury Regulation Sections 31.3401(c)-(1)(a) and (b), it is legally impossible for him to be considered an "employee", regardless of what the Respondent has attempted to claim to the contrary.

(6) PETITIONER DOES NOT HAVE AN "EMPLOYER" AND DOES NOT RECEIVE "WAGES" AS SO DESCRIBED IN THE CODE:

The definition of the words "employer" and "wages" are vital to Petitioner's position. These words appear in the Internal Revenue Code under CHAPTER 24 -- COLLECTION OF INCOME TAX AT SOURCE - DEFINITIONS, along with the definition of the word "employee", and are defined as follows:

> Section 3401(d) Employer.--For purposes of this chapter, the term "employer" means the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person,..... (emphasis added).
>
> Section 3401(a) Wages.--For purposes of this chapter, the term "wages" means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, ... (emphasis added).

Since Petitioner does not work for the government, and is not an officer of a corporation, he is therefore not an "employee" as so defined in the Code. Remember, we are not talking about the customary usage of the word "employee", but instead the legal

definition as it appears in Section 3401 (c) of the Internal Revenue Code. Now, taking this one step further, you will note under the definition of the word "employer", that in order for one to perform services for an "employer", he or she must be an "employee" of an "employer". So, consequently, if you are not an "employee" as defined in the Code, how could you possibly have an "employer" as defined in the Code? Obviously, you can't. This now leads us to the final definition of the word "wages". The Court will note from the definition in the Code that in order to have been paid "wages" one needs to perform services as an "employee" of an "employer". However, if you are not an "employee", and you don't have an "employer", how could you possibly be paid "wages" as an "employee" of an "employer" as so illustrated in the Code? Again, obviously, you can't. Therefore, if you are not an "employee", and you

don't have an "employer" who pays you "wages" as so illustrated in the Code, none of the definitions of the words "employee", "employer" and "wages" as so illustrated in the Code apply to you. Since the Petitioner is not an "employee", and does not have an "employer" from whom he receives "wages" as so defined and illustrated in the Code, than what do the checks represent that he receives from his "Contracting Party" the Navy Finance Center in Cleveland, Ohio? Simply put, these checks represent what he receives each month from his "Contracting Party" for the contracted sale of his property (his labor). The Supreme Court and the State Courts have consistently ruled that the constitutional guarantee of "liberty" protects the exercise of natural and common law rights of an individual to property, and over one's labor as a form of property. (The Antelope, 23 U.S. 66; Slaughter-House Cases, 83 U.S. 36, 127;

In re Marshall, 102 F.323; Low v. Reese Printing Co., 59 N.W. 362; Bogni v. Perotti, 112 N.E. 853.)

(7) TREASURY FORM W-4 IS COMPLETELY SELF-SERVING ON THE PART OF THE RESPONDENT AND CAN NOT BE USED TO PROPERLY DESCRIBE THOSE FACTS RELATING TO A NATURAL PRIVATE UNENFRANCHISED INDIVIDUAL SUCH AS PETITIONER:

Treasury Form W-4 is a form designed by the Respondent to serve only the purposes of the Respondent. Self-serving words and phrases of the Internal Revenue Service such as "Certificate", "Allowances", "Employee", "Employer", "Exemption" and "Employee's Withholding Allowance Certificate" all appear on the Form W-4, and all require a conclusion of law. None of the terms appearing on the form are FACTUAL; but nevertheless the Internal Revenue Service always refers to the Form W-4 as a FACTUAL document. The form is designed for use by an artificial corporation and not for the use of a natural private unenfranchised in-

dividual such as the Petitioner. Treasury Form is incomplete and deceptive, and does not have a line on it for the Petitioner to describe those FACTS that are relevant and material to determine withholding in his circumstances; thereby making it necessary for Petitioner to sign the Treasury Form W-4 under duress, inasmuch as his "Contracting Party", the Navy Finance Center in Cleveland, Ohio, through their representative the NAVAL RESERVE PERSONNEL CENTER in New Orleans, Louisiana, required the Form W-4 be completed and signed as a condition of the work-relationship agreement, even though that requirement was in direct violation of Section 3402 of the Internal Revenue Code, which only applies to someone who is an "employee", and is paid "wages" by an "employer". Since Petitioner is not an "employee", is not paid "wages" by an "employer", Section 3402 of the Internal Revenue Code does not apply to Petitioner as is clearly brought forward under

items (5) and (6) of this Petition for Certiorari.

(8) THE INTERNAL REVENUE SERVICE LIED IN THEIR LETTER TO PETITIONER OF AUG. 30, 1983 IN STATING THAT HIS CLAIM IS BASED ON HIS VIEW THAT CERTAIN TAX LAWS ARE UNCONSTITUTIONAL (EXHIBIT A of Appendix to this Petition for Certiorari):

Although Petitioner responded to the above FALSE charge on the 14th of September 1983 that nowhere in his request for refund, or in any other document at any other time to the Internal Revenue Service/or anyone else, did he ever make that statement; nevertheless, Respondent has failed to date to reply to Petitioner's denial of that FALSE and completely unsubstantiated charge.

(9) THE DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA ERRED IN THEIR ORDER OF DISMISSAL (MARKED FINAL ORDER) OF 23 SEPTEMBER 1985 INCLUDED IN THE APPENDIX OF THIS PETITION FOR CERTIORARI IN CITING BIERMANN V. COMMISSIONER OF INTERNAL REVENUE, NO. 84-5996 (11TH. CIR. AUGUST 26, 1985) AS THE BASIS FOR THEIR ORDER OF DISMISSAL; AND THE ELEVENTH CIRCUIT COURT OF APPEALS ALSO ERRED IN THEIR SUPPORT BY STATING IN THEIR DECISION THAT BIERMANN'S ARGUMENTS IN THIS IN-

STANT CASE ARE SIMILAR TO THOSE HE MADE IN BIERMANN V. COMMISSIONER OF INTERNAL REVENUE, SUPRA:

Contrary to what both Courts claim, the arguments are far from similar. In Biermann v. Commissioner, with the exception of Petitioner's contention that he is not an "employee" as defined in Section 3401(c) of the Code, his STATEMENT OF THE ISSUES TO BE DECIDED by the Eleventh Circuit Court of Appeals are totally different and unrelated, and the SUMMARY OF THE ARGU- ARGUMENT and the ARGUMENTS AND CITATIONS OF AUTHORITY IN SUPPORT OF HIS POSITION, are also totally different and unrelated. In Biermann v. Commissioner, there are only two (2) statements of issues presented to the Court; neither of which, with the exception of Petitioner's denial, within those issues, of not being an "employee" as defined in the Code, are remotely ~~to motely~~ related or even remotely similar to the issues and arguments presented in this

Petition for Certiorari. Consequently, both Court's contentions are unsupported by the record.

(10) THE ELEVENTH CIRCUIT COURT OF APPEALS ERRED IN THEIR DECISION IN SUSTAINING THE JUDGMENT OF THE DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA THAT PETITIONER'S ARGUMENTS WERE "WITHOUT A SCINTILLA OF MERIT.":

Inasmuch as Petitioner's VERIFIED COMPLAINT submitted to the District Court, in addition to EXHIBITS A thru N attached to that complaint in support of his position, clearly listed fifty-nine (59) FACTUAL justiciable and justifiable reasons, supported by 26 USC (Internal Revenue Code), and Petitioner's arguments brought forward in his NOTICE OF OBJECTION TO DEFENDANT'S MOTION TO DISMISS to which was attached his supporting MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS, all of which are lawful reasons for this Court to grant this Petition for Certiorari, so for both the Courts to im-

ply that Petitioner is a "taxpayer" subject to the Internal Revenue Code, and is not an unenfranchised natural private individual who is a "non-taxpayer" not subject to the Internal Revenue Code, notwithstanding all the FACTS he has presented in support of that position; and for the District Court for the Southern District of Florida to state in their ORDER OF DISMISSAL that they have reviewed carefully Petitioner's arguments and finds them to be "without a scintilla of merit"; and for the Eleventh Circuit Court of Appeals in their judgment to sustain that Court's ORDER and the FALSE charge of "without a scintilla of merit", and then to go on and accuse Petitioner of frivolity, is also totally and completely unsupported by the record.

(11) PETITIONER DID NOT SUBMIT ANY FALSE INFORMATION WITH REGARD TO WITHHOLDING AS WAS CHARGED BY RESPONDENT IN EXHIBIT B ATTACHED TO PETITIONER'S VERIFIED COMPLAINT SUBMITTED TO THE DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA:

Inasmuch as the Treasury Form W-4 submitted to Petitioner's "Contracting Party", the Navy Finance Center in Cleveland, Ohio, as so required by their representative the NAVAL RESERVE PERSONNEL CENTER in New Orleans, Louisiana as a condition of the work-relationship agreement between Petitioner and his "Contracting Party", notwithstanding that that such requirement was in direct violation of Section 3402 of the Internal Revenue Code, since that section of the Internal Revenue Code does not apply to Petitioner, but only applies to those individuals who fit the legal description of an "employee" as defined in Section 3401 (c), who is paid "wages" as defined in Section 3401(a) by an "employer" as defined in Section 3401(d), and only included information furnished by the Petitioner such as his name, address, social security number, his marital status, the date of submission, and the completion of the EXEMPT certification

as required by Section 3402(n) for those individuals incurring no income tax liability; nevertheless, the Respondent FALSELY accused Petitioner of submitting FALSE information with regard to withholding. When subsequently questioned in writing on numerous occasions as to what information supplied by the Petitioner in their review of his Treasury Form W-4 constituted FALSE information, the Respondent failed to ever respond.

(12) THE ELEVENTH CIRCUIT COURT OF APPEALS ERRED IN STATING THE FOLLOWING ON PAGE 2 OF THEIR JUDGMENT OF THE 11TH OF APRIL 1986 SUSTAINING THE DISTRICT COURT'S ORDER OF DISMISSAL (MARKED FINAL ORDER) OF 23 SEPTEMBER 1985 INCLUDED IN THE APPENDIX OF THIS PETITION FOR CERTIORARI:

(A) BIERMANN CONTENDS THAT HIS FORM W-4 WITHHOLDING STATEMENT WAS NOT FALSE OR MISLEADING BECAUSE "HE IS NOT A PERSON LIABLE FOR TAXES, IS NOT AN EMPLOYEE AND THEREFORE NOT SUBJECT TO WITHHOLDING WITHIN THE MEANING OF THE CODE, IS NOT PAID WAGES, BUT INSTEAD IS A FREEMAN AND AN UNENFRANCHISED INDIVIDUAL NOT SUBJECT TO TAXATION." (emphasis added by Petitioner);

(B) SINCE BIERMANN HAS FAILED TO SHOW ANY REASONABLE BASIS FOR CLAIMING

ON THE FORM W-4 THAT HE WAS EXEMPT FROM WITHHOLDING, THE JUDGMENT OF THE DISTRICT COURT IS AFFIRMED:

Biermann did not contend that his Form W-4 Withholding Statement was not false or misleading because of the reasons indicated above, but instead contended that his Form W-4 Withholding Statement was not false or misleading because there is nothing false or misleading about any of the FACTUAL information that was supplied by him on that form. The Court's attention is respectfully directed to item (7) of this Petition for Certiorari relating to Treasury Form W-4; to item (2) in relation to failure of Respondent to bring forward any FACTUAL evidence that Petitioner filed a FALSE Treasury Form W-4; and to item (10) relating to "taxpayer" vs. "non-taxpayer", all of which are also brought forward in Petitioner's VERIFIED COMPLAINT submitted to the District Court for the Southern District of Florida.

Inasmuch as Petitioner has brought for-

ward under item (5) of this Petition for Certiorari the legal definition of the word "employee" as so defined in Section 3401(c) of the Internal Revenue Code; and under item (6) relating to the legal definitions of the words "employer" and "wages" as so defined in Sections 3401(d) and (a), respectively, none of which those legally defined words apply to Petitioner; and then couple that FACTUAL evidence with the explanation under item (7) of this Petition for Certiorari describing how Treasury Form W-4 is designed by the Respondent to serve only the purposes of the Respondent, by their use on that form of self-serving words and phrases of the Internal Revenue Service, it then becomes evident that Biermann did indeed show reasonable basis for claiming on the Form W-4 that he was EXEMPT from withholding. See following remarks under CONCLUSION.

CONCLUSION

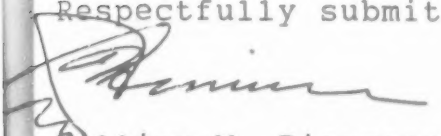
In conclusion, I respectfully remind

this Court of the number of violations of existing law committed by Respondent and upheld by both the District Court for the Southern District of Florida and the Eleventh Circuit Court of Appeals in their attempt to silence Petitioner in his pursuit of justice. I also respectfully bring to the attention of this Court, that the violations of those laws as they particularly relate to Sections 3401(c), (d) and (a) of the Internal Revenue Code, are more than sufficient to meet the requirement as a CONSIDERATION GOVERNING REVIEW ON CERTIORARI described under Rule 17.1.(c) of the United States Supreme Court relating to an important question of federal law which has not been, but should be, settled by this Court.

The salvation of our REPUBLIC is dependent upon this Court in compelling District Courts and Courts of Appeals to comply with the laws as written in arriving at just decisions in support of those laws. Anything

short of that can only eventually spell the complete destruction of our cherished and respected REPUBLIC!

Respectfully submitted,



William M. Biermann, Petitioner pro se
192 Park Land Drive
Lake Placid, Florida 33852

Telephone: (813) 465-5090

APPENDIX INDEX Page

ORDER OF DISMISSAL (marked FINAL ORDER), District Court for the Southern District of Florida dated the 23rd day of September and filed SEP 24, 1985 ---------- 1A-3A

ORDER, District Court for the Southern District of Florida filed OCT 17, 1985 ---------- 4A

ORDER, District Court for the Southern District of Florida filed FEB 3, 1986 ---------- 5A

ORDER, District Court for the Southern District of Florida filed FEB 11, 1986 ---------- 6A,7A

ORDER, Eleventh Circuit Court of Appeals filed APR 28, 1986 ------ 8A

Petitioner's MOTION FOR RECONSIDERATION dated 30 April 1986 ----- 9A,10A

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OPINION, Eleventh Circuit Court of Appeals, Biermann v. Commissioner, No. 84-5996, Aug. 26, 1985 ------ 12A-16A

OPINION, Eleventh Circuit Court of Appeals, Biermann v. United States of America, No. 85-5959, April 11, 1986 ---------- (marked DO NOT PUBLISH) 17A-20A

JUDGMENT, Eleventh Circuit Court of Appeals, Biermann v. United States of America, No. 85-5959 (D.C. Docket No. 85-8366) entered April 11, 1986 ---------- (marked CORRECTED JUDGMENT) 21A,22A

Letter from William B. Hertlage, Internal Revenue Service of Atlanta, Georgia addressed to Petitioner dated Aug. 30, 1983, marked as EXHIBIT A, in which representative of Respondent FALSELY accuses Petitioner that his claim is based on his view that certain tax laws are unconstitutional ---------- 23A,24A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.85-8366-Civ-GONZALEZ

WILLIAM M. BIERMANN, :

Plaintiff, :

vs. :

UNITED STATES OF AMERICA, :

Defendant. :

FINAL ORDER

FILED SEP 24, 1985

ORDER OF DISMISSAL

THIS CAUSE has come before the Court upon the Motion to Dismiss filed on behalf of the defendant.

The plaintiff seeks a refund of the penalty assessed pursuant to Title 26 U.S. C.A., section 6682 by the Internal Revenue Service. The plaintiff contends that his Form W-4 withholding statement was neither false or misleading as he is not a person liable for taxes but a freeman and unenfranchised individual to whom taxes may not be assessed, and further, he is not an employee subject to withholding requirements.

The defendant moves to dismiss this case as the plaintiff fails to state a claim for which relief may be granted.

The court has reviewed carefully the plaintiff's arguments and finds them to be without a scintilla of merit. For the reasons set forth in Biermann v. Commissioner of Internal Revenue, No. 84-5996 (11th Cir. August 26, 1985) and Hyslep v. United States, No. 84-3074 (11th Cir. July 16, 1985), the Motion to Dismiss will be granted.

Accordingly, it is hereby

ORDERED AND ADJUDGED as follows:

1. The Motion to Dismiss be and the same is GRANTED. This case is hereby DISMISSED with prejudice.

2. The defendant's request for attorneys fees and costs be and the same is GRANTED. Within ten (10) days of the filing of this Order, the defendant shall submit appropriate documention of fees and costs incurred defending this matter.

DONE AND ORDERED in Chambers, at Fort Lauderdale, Florida, this 23rd day of September, 1985.

/s/ Jose A. Gonzalez, Jr.
UNITED STATES DISTRICT JUDGE
JOSE A. GONZALEZ, JR.

cc: William Biermann, Pro se
Paul M. Predmore, Esg.

FINAL ORDER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.85-8366-Civ-GONZALEZ

WILLIAM M. BIERMANN, :

Plaintiff, :

vs. :

UNITED STATES OF AMERICA, :

Defendant. :

FILED OCT 17, 1985

ORDER

THIS CAUSE has come before the court upon the Motion to Set Amount of Attorney's Fees filed on behalf of the defendant pursuant to this court's September 24, 1985 Order. The Court having considered the Motion and being duly advised therein, it is hereby

ORDERED AND ADJUDGED that the Motion be and the same is GRANTED. Judgment is hereby entered in favor of the defendant and against the plaintiff in the amount of $268.31.

DONE AND ORDERED in Chambers, at Fort Lauderdale, Florida, this 17th day of Oct.1985.

cc: William M.Bierman
Paul M.Predmore, Esq.

/s/Jose A.Gonzalez,Jr.
U.S. DISTRICT JUDGE
JOSE A. GONZALEZ, JR.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.85-8366-Civ-GONZALEZ

WILLIAM M. BIERMANN, :
Plaintiff, :
vs. :
UNITED STATES OF AMERICA, :
Defendant. :

FILED FEB 3, 1986

ORDER

THIS CAUSE has come before the court upon the plaintiff's request for stay of collection. Although the plaintiff states that a "Supersedeas Bond" in the amount of $268.31 was posted, neither the court docket nor court file reflect the posting of a bond. Accordingly, it is hereby

ORDERED AND ADJUDGED that the plaintiff's request for stay of collection be and the same is DENIED.

DONE AND ORDERED in Chambers, at Fort Lauderdale, Florida this 3rd day of Feb.1986.

cc: William M.Biermann
Steven Shapiro, AUSA

/s/Jose A.Gonzalez,Jr.
U.S. DISTRICT JUDGE
JOSE A.GONZALEZ, JR.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.85-8366-Civ-GONZALEZ

WILLIAM M. BIERMANN, :

Plaintiff, :

vs. :

UNITED STATES OF AMERICA, :

Defendant. :

FILED FEB 11, 1986

ORDER

THIS CAUSE has come before the court upon the plaintiff's request that this court "suspend" its February 3, 1986 Order. The plaintiff claims that when he filedhis letter stated that he gave a supersedeas bond in the amount of $268.31, he merely gave the court his word that he would pay that amount should he lose his appeal. The court, however, finds that it is necessary for the plaintiff to post a money bond, not his word of honor. Accordingly, it is hereby

ORDERED AND ADJUDGED that this court's February 3, 1986 Order be and the same is

VACATED. Within five (5) days of the filing of this Order, the plaintiff shall post either a supersedeas bond or cash in the amount of $300.00. Upon the timely filing of the bond or cash, the plaintiff's request for a stay of collection will be GRANTED. Should the plaintiff fail to comply with this Order, the defendant may proceed to collect the amount of tax and/or penalty now in dispute.

DONE AND ORDERED in Chambers, at Fort Lauderdale, Florida this 11th day of February, 1986.

/s/ Jose A. Gonzalez, Jr.
UNITED STATES DISTRICT JUDGE
JOSE A. GONZALEZ, JR.

cc: William M. Biermann
Steven Shapiro, AUSA

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 85-5959

WILLIAM M. BIERMANN,
Plaintiff-Appellant,

versus

UNITED STATES OF AMERICA,
Defendant-Appellee.

FILED
U.S.COURT OF APPEALS
ELEVENTH CIRCUIT
APR 28,1986

SPENCER D.MERCER
CLERK

Appeal from the United States District Court
for the Southern District of Florida

O R D E R:

Appellant's motion for extension of time to file petition for rehearing through August 4, 1986 is denied notwithstanding appellant's great person loss, because appellant's case is legally frivolous.

MOT-6H
(Rev. 5/82)

/s/ R. Lanier Anderson, III
UNITED STATES CIRCUIT JUDGE

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

WILLIAM M. BIERMANN, Appellant, v. COMMISSIONER OF INTERNAL REVENUE, Appellee	)	Appeal No. 85-5959

MOTION FOR RECONSIDERATION

Inasmuch as the Eleventh Circuit Court has denied Appellant's MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR REHEARING requesting a 90 day extension of time to file petition for rehearing, it is therefore respectfully requested of this Court that a MOTION FOR RECONSIDERATION be granted in order that the Appellant may have the necessary time to settle the estate and conduct his life in a proper and dignified manner without any further undue and unnecessary pressure created by the death of his wife. Or, in lieu of the foregoing motion, that the Court grant the following:

RENEWED MOTION FOR AN EXTENSION OF LESS TIME

If a RENEWED MOTION FOR AN EXTENSION

OF LESS TIME is granted by the Court, it is respectfully requested that it be granted for 60 days.

In all due respect, contrary to what the Court claims in their denial of his MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR REHEARING of 16 April 1986, Appellant's position is not frivolous.

Respectfully submitted,

/s/ William M. Biermann Date: 30 April 1986
Appellant pro se
192 Park Land Drive
Lake Placid, Florida 33852

Telephone: (813) 465-5090

CERTIFICATE OF SERVICE

This is to certify that the foregoing document has been served on the parties named, in the United States Mail, in a postage paid wrapper to the addresses shown, and on the following date:

Spencer D. MERCER, Clerk
U.S. COURT OF APPEALS
Eleventh Circuit
50 Spring Street, S.W.,
Atlanta, Georgia 30303-3147

Glenn L.ARCHER,Jr.,
Ass't AttGen.,Tax.Div.,
U.S.Dept. of Justice
Washington, D.C. 20530

/s/ William M. Biermann Date: 1 May 1986

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 85-5959

WILLIAM M. BIERMANN,
Plaintiff-Appellant,

versus

UNITED STATES OF AMERICA,
Defendant-Appellee.

FILED
U.S.COURT OF APPEALS
ELEVENTH CIRCUIT

MAY 28, 1986

SPENCER D. MERCER
CLERK

Appeal from the United States District Court
for the Southern District of Florida

Before GODBOLD, Chief Judge, HILL and ANDERSON, Circuit Judges.

B Y T H E C O U R T:

Appellant's motion for reconsideration of this Court's order entered April 28, 1986 is denied.

MOT-6H
(Rev. 5/82)

(Referenced in No. 85-5959, Eleventh Circuit, marked DO NOT PUBLISH)

William M. BIERMANN,
Petitioner-Appellant,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent-Appellee.

No. 84-5996

United States Court of Appeals,
Eleventh Circuit.

Aug. 26, 1985.

Taxpayer appealed from a decision of the United States Tax Court in favor of the Commissioner of Internal Revenue finding taxpayer liable for tax deficiencies and additions to tax for the years 1978 and 1979. The Court of Appeals held that: (1) monies received by taxpayer constituted taxable income notwithstanding taxpayer's contentions that monies he received should not be considered income because Internal Revenue Code did not define "income", that his wages were not 'income," that he was not a "person liable for taxes," but rather a freeman and unenfranchised individual who was not subject to taxation and that he was not an "employee" subject to withholding

within meaning of Internal Revenue Code, and (2) Government would be awarded double costs and reasonable attorney fees incurred for cost of defending an appeal by a taxpayer who was well warned by Tax Court that his positions were frivolous beyond doubt and had consistently been rejected by courts at every level of review.

Affirmed and remanded.

On Appeal from the Decision of the United States Tax Court.

Before TJOFLAT, HILL and ANDERSON, Circuit Judges.

PER CURIAM:

(1) This is a so-called "tax protest" case which appellant Biermann challenges the decision of the Tax Court in favor of the Commissioner of Internal Revenue ("Commissioner") finding Biermann liable for tax deficiencies and additions to tax for the years 1978 and 1979. Biermann does not dispute the amounts of wages, interest and other in-

come that the Commissioner claims he received in these years. Moreover, the parties stipulated both orally and at trial as to the deductions that Biermann was entitled to for the years in question. His sole claims are that (1) the monies he received should not be considered income because the Internal Revenue Code does not define "income"; (2) his wages are not "income"; (3) he is not a "person liable for taxes", but rather a "freeman and unenfranchised individual" who is not subject to taxation; and (4) he was not an "employee" subject to withholding within the meaning of the Internal Revenue Code and that, therefore, the withholding from his wages were illegal "taxes" assessed against him. These arguments are patently frivolous, have been rejected by courts at all levels of the judiciary, and, therefore, warrant no further discussion. The judgment on the Tax Court is AFFIRMED.

(2) In addition, the Commissioner urges this court to award double costs and attorney's fees under Fed.R.App.P. 38. The Tax Court concluded that Biermann's position was "patently ridiculous (a)nd will not prevail in any Court." Record, Doc. 16 at 27; see also id. at 24 ("your position is frivolous without merit. Will never be sustained in this or any other Court. You are wasting your time. You are costing yourself money"). The court decided, "however, ... for reasons I don't fully understand myself, I am not going to impose a fine." Id. at 28. Although the Tax Court did not impose a penalty, compare Waters v. Commissioner, 764 F.2d 1389 (11th Cir. 1985) (double costs and attorney's fees on appeal awarded after the Tax Court had imposed a $2,500 frivolity penalty), we believe that Biermann was well warned by the Tax Court that his positions were frivolous beyond doubt and had consistently been rejected by courts at every level of review.

Biermann was duly warned and should have been aware of the consequences of taking up the government's and this court's time with this appeal. We therefore find it appropriate to exercise our discretion under Fed. R.App.P. 38 to AWARD double costs to the government and reasonable attorney's fees incurred for the cost of defending this appeal. We REMAND to the tax court for a determination of such reasonable attorney's fees.

AFFIRMED and REMANDED

DO NOT PUBLISH

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

NO. 85-5959
Non-Argument Calendar

WILLIAM BIERMANN,

Plaintiff-Appellant,

versus

UNITED STATES OF AMERICA,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida

(April 11, 1986)

Before GODBOLD, Chief Judge, HILL and ANDERSON, Circuit Judges.

PER CURIAM:

Plaintiff-appellant William M. Biermann filed the instant suit in district court seeking a refund of monies paid by him to the Internal Revenue Service to satisfy a penalty assessed against him for filing a false Form W-4. Biermann contends that his Form W-4 withholding statement was not false or misleading because "he is not a person liable for taxes, is not an employee and therefore not subject to withholding within the meaning of the Code, is not paid wages, but instead is a freeman and an unenfranchised individual not subject to taxation." Appellant's Brief at 8 (emphasis omitted). The district court found that Biermann's arguments were "without a scintilla of merit" and dismissed the case.

Biermann's arguments in the instant case are similar to those he made to this court in appealing a Tax Court decision in favor of the Commissioner of Internal Revenue finding him liable for tax deficien-

cies and additions to tax for the years 1978 and 1979. Biermann v. Commissioner of Internal Revenue, 769 F.2d 707, 708 (11th Cir. 1985). As we stated then, "(t)hese arguments are patently frivolous, have been rejected by courts at all levels of the judiciary, and, therefore, warrant no further discussion." Id. Since Biermann has failed to show any reasonable basis for claiming on the Form W-4 that he was exempt from withholding, the judgment of the district court is affirmed.

The government argues that double costs and attorney's fees should be imposed against Biermann under Fed.R.App.P. 38. The district court found that Biermann's arguments were "without a scintilla of merit." Record, Doc. 12 at 1. The district court also awarded attorney's fees and costs to the government. Id. at 2. We believe that Biermann was well warned by the district court in the instant case and by this court in his appeal with

regard to his 1978 and 1979 tax returns, 769 F.2d at 707, that his arguments were frivolous and had consistently been rejected by courts at every level of review. Since this court awarded double costs and attorney's fees when Biermann previously made patently frivolous arguments, he clearly knew the consequences of taking up the government's and this court's time with the instant appeal. We therefore AWARD double costs to the government and reasonable attorney's fees incurred in defending this appeal. We REMAND to the district court for a determination of such reasonable attorney's fees.

AFFIRMED AND REMANDED.

3 (contd.)

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 85-5959
Non-Argument Calendar

D.C. Docket No. 85-8366-Civ-JAG

WILLIAM BIERMANN,
Plaintiff-Appellant,

versus

UNITED STATES OF AMERICA,
Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida

Before GODBOLD, Chief Judge, HILL and ANDERSON, Circuit Judges.

CORRECTED
J U D G M E N T

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was taken under submission by the Court upon the record and briefs on file, pursuant to Circuit Rule 23;

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court

that the judgment of the said District Court in this cause be and the same is hereby, AFFIRMED; and that this cause be and the same is hereby, REMANDED to said District Court for a determination of reasonable attorney's fees;

It is further ordered that plaintiff-appellant pay to defendant-appellee, double costs on appeal to be taxed by the Clerk of this Court.

Entered: April 11, 1986
For the Court: Spencer D. Mercer, Clerk

By: /s/ Warren A. Godfrey
Deputy Clerk

ISSUED AS MANDATE: JUN 6, 1986

Department of the Treasury
Internal Revenue Service

ATLANTA, GA 31101

In reply refer to: 07590134
Aug. 30, 1983
LTR 916C 02574
272-12-1562

WILLIAM M BIERMANN
192 PARK LAND DR
LAKE PLACID, FL 33852

CERTIFIED MAIL

Kind of Tax: W-4 Penalty
Contact Telephone Number: 404-455-2958

Dear Mr. Bierman:

We are sorry, but we cannot allow your refund claim for $514.65 for the tax period ended Dec. 31, 1981. The claim is based on your view that certain tax laws are unconstitutional; only the courts have authority to pass on such matters.

This letter is your legal notice that we will not consider your claim. If you wish to bring suit or proceedings for the recovery of any tax, penalties, or other moneys for which this disallowance notice is issued, you may do so by filing such a suit with the United States District Court having jurisdiction, or the United States Court of Claims.

EXHIBIT A

The law permits you to do this within 2 years from the mailing date of this letter. If you have any questions and wish to call us at the number shown above, Ms. Bagley will be able to help you.

Sincerely yours,

/s/ William B. Hertlage
Director, Service Center

William M. Biermann, Petitioner pro se
192 Park Land Drive
Lake Placid, Florida 33852

Telephone: (813) 465-5090

EXHIBIT A

NOTARIZED STATEMENT OF PETITION
FOR CERTIORARI

STATE OF FLORIDA
COUNTY OF HIGHLANDS

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, personally appeared WILLIAM M. BIERMANN, to me known to be the person described in and who executed the foregoing instrument, and who acknowledged before me that he executed the same.

WITNESS my hand and official seal in the County and State last aforesaid this 8th day of July 1986.

Vanessa G. Wilson

MY COMMISSION EXPIRES:

Notary Public, State Of Florida At Large
My Commission Expires June 21, 1987
Bonded By Lawyers Surety Corp.

AFFIDAVIT OF SERVICE OF THIS
PETITION FOR CERTIORARI

As required by Rule 28.5. and 28.5.(c) of RULES of the Supreme Court of the United States, this is to certify that in addition to the forty (40) copies served on the Clerk of the United States Supreme Court, that three (3) copies of the foregoing PETITION FOR CERTIORARI have also been served on the following parties, in the United States Mail, first-class in a postage paid/wrapper to the addresses shown on the following date; and that this constitutes service on all parties so required to be served: (8 July 1986)

Solicitor General
Department of Justice
Washington, D.C. 20530;

Ass't Attorney General
Tax Division
Department of Justice
Washington, D.C. 20530

William M. Biermann, Petitioner pro se
192 Park Land Drive
Lake Placid, Florida 33852

Telephone: (813) 465-5090 Date: 8 July 1986